

# A super solution for separating couples



Attorney-General Daryl Williams introduced the new superannuation legislation into the House on 13 April 2000.

"It's the super of the future." That's what we are told by former Reserve Bank Governor Bernie Fraser when he appears on our television screens selling one of the many superannuation products on the market.

Now that catchcry could be taken up by the Government as it steers its new superannuation legislation through Parliament. And if the Government has its way, it will be a shared future when it comes to superannuation.

The Family Law Legislation Amendment (Superannuation) Bill 2000, introduced into the House of Representatives on 13 April 2000, will amend the Family Law Act so that people going through a marriage breakdown can divide their superannuation in the same way as their other assets. Separating couples will be able to divide their superannuation by agreement or, failing that, by court order.

Under the proposed legislation, people will be able to choose what proportion of their superannuation will be divided, if at all. People also will be able to trade off their superannuation for other assets.

*'This legislation is designed to address inequity and inflexibility.'*

Attorney-General Daryl Williams said that superannuation has become an increasingly valuable component of the asset wealth of most Australian families.

"Despite this wealth of funds," commented Mr Williams, "many couples whose marriages break down do not consider superannuation among their assets when they arrange their property settlement."

Mr Williams claimed that the existing rules could give rise to inflexible and inequitable situations. He noted that currently the Family Court can and does take superannuation interests into account and divides other property accordingly. But, according to Mr Williams, this is not an ideal situation.

"It often means that current property – usually the family home – has to be traded away in exchange for superannuation that may not be able to be accessed for many years. In many cases, this may leave one person with a house but no retirement income, and the other person with no accommodation but significant retirement income that may not be accessible for many years.

"This legislation is designed to address the inequity and inflexibility of this situation," said Mr Williams.

As part of the legislation, couples will have the capacity to defer an agreement about how their superannuation interests are to be divided. This will be done by 'flagging' the superannuation interest. The legislation would prevent the superannuation trustee from dealing with the 'flagged' superannuation until the flag has been lifted either by further agreement or by court order.

While the emphasis of the legislation is for parties to come to agreed solutions, the court will be given the power to split the value of superannuation as part of a property settlement.

"Trustees of superannuation funds will be required to comply with a binding agreement or a court order that provides for a division of a superannuation interest," said Mr Williams.

*'Labor welcomes the bill but many questions remain unanswered.'*



Shadow Attorney-General Robert McClelland said that the "legislation builds on the work Labor began".

The Opposition welcomed the introduction of the legislation to the House, indicating that it supported the policy intention of the bill. In a joint media statement, Shadow Assistant Treasurer Kelvin Thomson and Shadow Attorney-General Robert McClelland said that the legislation "builds on the work Labor began when in Government".

However, the Opposition claimed that many questions remain unanswered, including the reasons why the bill will apply retrospectively and the funding that will be available to support the initiatives in the bill.

"The bill places additional responsibilities and workload on the already under-resourced Superannuation Complaints Tribunal (SCT) which will hear complaints from divorcing couples," Mr McClelland said. "The SCT is already struggling under an enormous backlog of complaints and this initiative does not provide any new funding for the SCT."

The Opposition will have the opportunity to seek answers to these questions when the legislation is debated in the House.

If passed by the House of Representatives and the Senate, the legislation will commence one year to the day that the bill is assented to by the Governor-General. The delay is to allow the superannuation industry and relevant government agencies to make the necessary adjustments to their information and computer systems to implement the division of superannuation on marriage breakdown.